IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6191 OF 2005

Shri nelson Thomas Andradis,
At - Saloli, Tal. Vasai, Dist.Thane. ... Petitioner

V/s

The State of Maharashtra & ors. ... Respondents

Smt. Neeta P. Karnik for the petitioner.

Mr. A.H. Palekar, A.G.P. for the respondent No.1.

Mr. S.P. Thorat for the respondent No.2.

Mr. G.S. Godbole with L.F. Farel and Sandesh Deshpande for the respondent No.4.

CORAM: S.U. KAMDAR, J.

DATED: 22ND NOV., 2005

P.C.:

1. The present petition is filed challenging the order passed by the Minister, Rural Development, in exercise of powers conferred under Sec.39 of the Bombay Village Panchayats Act, 1958. By the impugned order, the Minister has upheld the disqualification of the petitioner as Sarpanch of Village Saloli, Tal. Vasai, Dist. Thane.

2. Few facts of the present petition in brief are as under:-

In the year 2003, the petitioner was elected in the Grampanchayat election and was subsequently elected as a Sarpanch of the Grampanchayat. Respondent No.4 was a owner alongwith one Richard Andrades of Survey No.34 Hissa No. 33 situated at the said village Saloli. It is the case of the petitioner that the said respondent No.4 constructed compound wall without obtaining prior permission from the village Panchayat and, therefore, the said construction was illegal. It is the case of the petitioner that the Grampanchayat issued a notice on 7.9.2003 to pull down the said illegal compound wall on the ground that the access of the respondent No.4 was completely blocked by the construction of the said compound wall. Ultimately, the petitioner pulled down the said compound wall on 9.12.2003 with the help of the police. Respondent No.4 thereafter filed a complaint on 31st December, 2003 against the petitioner and requested the respondent No.2 to proceed against the petitioner under Sec.39 of the Bombay Village Panchayats Act, 1958. On 21.1.2004, the Chief Executive Officer of the respondent No.2 was directed to conduct preliminary

enquiry and thereafter the Standing Committee has passed a resolution on 13.8.2004 to remove the petitioner from the post of Sarpanch. Being aggrieved by the said order, the appeal was preferred to the Additional Commissioner, Konkan Division which appeal was allowed by the Additional Commissioenr and against this order dated 15.10.2004 revision was filed before the Minister under Sec. 155 of the Bombay Village Panchayats Act, 1958. The Minister, by the impugned order dated 26.8.2005 has set aside the order of the Additional Commissioner and confirmed the order passed by the Standing Committee and disqualified the petitioner from the post of Sarpanch. The minister has further disqualified the petitioner from contesting the Grampanchayat elections for six years from the date of the order. This impugned order is the subject matter of challenge before me in the present writ petition.

3. The learned counsel for the petitioner first contended that under the provisions of Sec.39 of the Bombay Village Panchayats Act, 1958, particularly the provision of sub-section (1) thereof, it is necessary that the Chief Executive Officer must conduct an enquiry and give a reasonable opportunity to the petitioner of being heard and submit his report to the Standing

Committee. The learned counsel for the petitioner has drawn my attention to page Nos. 98, 99 and 100 of the petition and has contended that these noting indicates that the enquiry was conducted not by the Chief Executive Officer but by the Block Development Officer. The petitioner has thus contended that the resolution passed on the enquiry report of the Block Development Officer and not of the Chief Executive Officer is illegal and contrary to the provisions of Sec.39(1) of the Bombay Village Panchayats Act, 1958. The learned counsel for the petitioner has relied upon the judgment of this Court in support of the aforesaid contention i.e. **Nimba Yadav Bhoi v/s President, Standing Committee, Zilla Parishad, Jalgaon & ors., reported in 2002 (3) Mh.L.J. 466.** It has been contended that it is held in the aforesaid judgment that the enquiry under Sec.39(1) by the Chief Executive Officer himself is mandatory and such power of the Chief Executive Officer cannot be delegated to any officer subordinate to him. Secondly, the learned counsel for the petitioner has contended that the action on the part of the petitioner to demolish the compound wall is in consonance with Sec.52 of the Bombay Village Panchayats Act, 1958 and cannot be termed as illegal and unauthorised act for disqualification under Sec.39 of the Village Panchayats

Act, 1958. It has been thus contended that, for such legal act supported by the authority of law, the petitioner cannot be disqualified and the entire enquiry conducted against the petitioner was by the Block Development Officer, Zilla Parishad and the report made by the Chief Executive Officer recommending punishment on the ground that the petitioner's act is illegal and he has exercised the powers by taking action which is illegal, cannot be accepted and, therefore, the entire resolution as well as the enquiry proceeding is vitiated in law and is liable to be set aside.

4. In so far as the first contention is concerned, the learned counsel for the respondent Nos. 2 and 3 has produced before me the file of the Zilla Parishad. He has also produced the report of the Chief Executive Officer made to the Standing Committee which is in the compilation at page 14. The said report is duly signed by the Chief Executive Officer and inter-alia after conducting enquiry gives the recommendation that the action of the petitioner tantamounts to the breach of the order passed by the Court and therefore, action should be taken under Sec.39(1) of the Bombay Village Panchayats Act, 1958 for the disqualification of the petitioner. Respondent Nos. 1 and 2 have also produced

the details under which the petitioner was given an opportunity of hearing before the Standing Committee and after giving hearing to the petitioner the aforesaid order has been passed.

5. The learned counsel for the respondent Nos. 1, 2 and 4 has also contended before me that the action on the part of the petitioner is totally illegal because the demolition of the compound wall was for a malafide reason to support some of the members of the village and cannot be supported by law. It has been brought to my notice that in respect of the said property there has been a litigation pending right from 2002. There was proceeding filed by some of the villagers against respondent No.4 being Suit No. 14 of 2002 before the Tahsildar Vasai and the Tahsildar has passed an order that the property is exclusively a personal property of respondent No.4 and the complainants in the said complaint are not entitled to any right of way from the said property. It has also been held that there is no public right of way from the suit land. Even in respect of the said property, there was a suit preferred being R.C.S. No. 163 of 2003 by certain villagers and sought that the plaintiff should be prevented from carrying out construction on the said property and application for

interim injunction was rejected by order dated 14.7.2003 passed by the Civil Judge, J.D. in R.C.S. No. 163 of 2003. There is also a suit pending in the Civil Court at Vasai preferred by the respondent No.4 against CIDCO pertaining to the compound wall constructed by him. However, the learned counsel for the petitioner contends that the petitioner is unaware of any such proceedings which are pending before the various Courts and authorities and the action of demolition carried out by him was because the construction of the compound wall was without any permission from the village Panchayat as required under the provisions of Sec.52 of the Bombay Village Panchayats Act, 1958. The learned counsel has relied upon the provisions of sub-sec. (5) of Sec.52 in support of the contention that if permission is not obtained to carry out the construction, then the unauthorised construction can be demolished. Provision of Sec.52 (5) inter-alia require a prior notice to the person to comply with certain requisitions before any power of demolition can be exercised. The petitioner has not been able to show any such notice being issued by the Village Panchayat to the respondent No.4. Not only that, it is not possible for me to believe when there is a finding given by the minister in the impugned order that the petitioner was aware of the fact that the

litigation between the parties are pending before the Sub-Divisional Officer inspite of being aware of the said fact the petitioner has exercised his power as Sarpanch and carried out demolition of the compound wall. There has been an order of status-quo passed by the Civil Judge, Junior Division in a suit where CIDCO is a party, however, inspite of the said order of status-quo, the demolition has been carried. However, in my opinion the finding given by the authorities pertaining to the fact that the petitioner was aware and the action of the petitioner in demolishing the structure is contrary to law cannot be interfered with in writ jurisdiction. In any event, the petitioner is not able to show that the demolisition has been in exercise of powers conferred under any of the provisions of The Bombay Village Panchayats Act, 1958. The petitioner has not been able to show that either a show cause notice was given to the respondent No.4 or any appropriate order is passed for carrying out demolition of the compound wall. In that way of the matter, I do not find any substance in the matter. Therefore, the action on the part of the petitioner is valid and justified. In respect of the alternate contention that there is no enquiry by the Chief Executive Officer himself also, I am unable to accept the said submission

in the light of the record submitted by respondent Nos. 2 and 3 which inter-alia includes the report of the Chief Executive Officer and, therefore, in my opinion, the aforesaid submission has also no merits.

6. However, the petitioner is right and justified in complaining that the order passed by the minister is beyond the scope of Sec.39 of the Village Panchayats Act, 1958 when after disqualification the minister has further passed an order holding that the petitioner is not eligible for contesting the election for a period of six years. The said order is without any support of any of the provisions of Sec.39 or any other provision of the said Act. Reliance placed by the respondent Nos. 1 and 2 on Sec. 39(2) and by the respondent No.4 on Sec.14(1)(d) of the Bombay Village Panchayats Act, 1958 has no application whatsoever nor it has conferred any power on the minister to declare such disqualification and make the petitioner not eligible for contesting the election for the period of six years.

7. In the light of the aforesaid circumstances, the petition partly succeeds. The order of the minister in so far as declaring the petitioner disqualified for contesting the elections for a period of 6 years is set

aside. So far as the order that petitioner should be removed from the post of Sarpanch is upheld and accordingly the petition is made absolute to the aforesaid extent. However, there shall be no order as to costs.

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